

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**MARVIN BROWN,**

**Petitioner,**

**vs.**

**No. CIV-08-176 JB/RHS**

**MIKE A. HEREDIA, Warden,**

**Respondent.**

**RESPONDENT'S MOTION TO HOLD THE FILING OF AN ANSWER IN  
ABEYANCE PENDING THE DISPOSITION OF RESPONDENT'S MOTION TO  
DISMISS PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28  
U.S.C. § 2244 AS A SECOND OR SUCCESSIVE PETITION**

Respondent, by Mark Lovato, Assistant Attorney General, hereby moves to hold the filing of an answer in abeyance pending the disposition of Respondent's motion to dismiss petition for writ of habeas corpus pursuant to 28 U.S.C. § 2244 as a second or successive petition.

Respondent respectfully submits:

1. Petitioner is in the lawful custody of Respondent Heredia, Warden, pursuant to valid Judgment, Sentence and Commitment filed in the Second Judicial District Court, Bernalillo County, Cause No. CR 92-0760, on September 14, 1994.
2. An Answer is currently due on or before June 26, 2008.

3. Petitioner has filed at least two, if not more, previous petitions for federal habeas relief, 28 U.S.C. § 2254, challenging the state court conviction and sentence in the Second Judicial District Court, Bernalillo County, Cause No. CR 92-0760.

4. The filing of an answer to the instant petition is premature based on the current status of the instant petition and Respondent's pending motion concerning 28 U.S.C. § 2244.

5. Until Respondent's motion filed pursuant to 28 U.S.C. § 2244 is decided, Respondent respectfully requests that the filing of an answer be held in abeyance.

6. Petitioner appears pro se. No attempt was made to determine Petitioner's position on this motion.

WHEREFORE Respondent respectfully requests that this Court hold the filing of an answer in abeyance pending the resolution of Respondent's pending motion to dismiss based on 28 U.S.C. § 2244.

Respectfully submitted,

GARY K. KING  
Attorney General

Electronically filed  
/s/ Mark Lovato  
Mark Lovato  
Assistant Attorney General

Attorneys for Respondent  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of June 2008, I filed the foregoing Motion to Hold the Filing of an Answer in Abeyance, electronically through the CM/ECF system. I further certify that on such date I served the foregoing on the following non-CM/ECF participant in the manner indicated:

Via first-class mail, postage prepaid addressed as follows:

Marvin Brown # 29746

Southern New Mexico Correctional Facility

Post Office Box 639

Las Cruces, New Mexico 88004

/s/ Mark Lovato

Mark Lovato

Assistant Attorney General